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# Supreme Court of the United States

## OCTOBER TERM, 1928

No. 39

J. R. WHEELER,
PETITIONER,

vs.

HOWARD GREENE,
RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN.
RESPONDENT.

**Brief for the respondent in opposition to the petition for a writ of certiorari in the case of Howard Greene, receiver of The Bankers Joint Stock Land Bank of Milwaukee vs. J. R. Wheeler, reported in 29 Fed. (2d) 468.**

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(34,020)

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# Supreme Court of the United States

## OCTOBER TERM, 1928

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## No. 711

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J. R. WHEELER,

PETITIONER,

vs.

HOWARD GREENE,

RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN.

RESPONDENT.

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**Brief for the respondent in opposition to the petition for a writ of certiorari in the case of Howard Greene, receiver of The Bankers Joint Stock Land Bank of Milwaukee vs. J. R. Wheeler, reported in 29 Fed. (2d) 468.**

Respondent opposes the granting of a writ of certiorari upon the following grounds:

1. The construction of the statute here involved is plain; administration is proceeding promptly and efficiently and there is no reason why this court should assume jurisdiction.

2. The question involved is one of procedure and the reversal of this decision will not change or affect the substantive rights of the parties.

3. The decision by the Circuit Court of Appeals for the Seventh Judicial Circuit in this case and the similar decisions by the Circuit Court of Appeals for the Eighth Judicial Circuit in the case of *Krauthoff v. Kansas City Joint Stock Land Bank, et al.*, decided February 20, 1929,* and *Krauthoff v. Kansas City Joint Stock Land Bank, et al.*, 23 Fed. (2d) 71, are in accord with each other and with applicable decisions of this court.

## Statement of the Case.

The Bankers Joint Stock Land Bank of Milwaukee was organized under the provisions of the Federal Farm Loan Act, and had a capital of $1,200,000, divided into 12,000 shares of the par value of $100 each.

Operating with this capital, the Bank issued and there were outstanding in the hands of the public on July 1, 1927, $15,771,600 par value of farm loan bonds, secured by farm mortgages and other collateral on deposit with the Farm Loan Registrar for the Seventh Land Bank District, at St. Paul, Minnesota.

The Bank was unable to meet the interest maturing on its bonds on July 1, 1927, and, inasmuch as it was clearly insolvent, the Federal Farm Loan Board, proceeding under Section 29 of the Farm Loan Act, (U. S. C. §961) declared the Bank insolvent and ap-

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* A copy of this decision is printed as an Appendix to this brief infra pp. 35-45)

pointed the respondent, Howard Greene, its statutory receiver.

Following an investigation of the affairs of the Bank, by order of the Federal Farm Loan Board, dated January 11, 1928, a 100% assessment upon the shares of stock in the Bank was levied payable March 1, 1928, and the respondent, as statutory receiver, was directed to enforce collection.

It was determined from initial examination that the liabilities of the bank (not including as such its capital stock) exceeded its assets by more than $1,500,000 and that this deficiency would be increased in liquidation. A reappraisal of the properties covered by the mortgages showed the deficiency must materially exceed this figure; and there is no question, therefore, as to the necessity for a 100% assessment of the stockholders' liability for payment of the Bank's obligations.

There has been a 15% payment made on the bonds in liquidation; and with 85% of both principal and interest unpaid, the bonds of the Bank are being traded in at less than 40% of par, thus confirming the necessity for a 100% assessment.

Stockholders of the Bank have shown their appreciation of the necessity for a full assessment upon their stock and 256 stockholders of the total of 482 have paid their assessment in whole or in part in the sum of $507,925.

The year and a half which has elapsed since the appointment of respondent, as statutory receiver, has shown the dangers of stockholders dying, moving away or becoming insolvent. Under the circumstances, the delay incident to the granting of a writ of certiorari must increase the difficulties incident to enforcing the rights of the creditors of the Bank.

## Statutes.

The enacting clause of the Federal Farm Loan Act provides in part:

> "An act . . . . to furnish a market for United States bonds, to create Government depositaries and financial agents of the United States, and for other purposes."

Section 1 of the Act (U. S. C. §641)* provides:

> "That this Act may be cited as the 'Federal Farm Loan Act.' *Its administration shall be under the direction and control of the Federal Farm Loan Board hereinafter created.*" [Italics ours.]

Section 3 of the Act (U. S. C. §651) provides:

> "That there shall be established at the seat of government in the Department of the Treasury a bureau *charged with the execution of this Act* and of all Acts amendatory thereof, to be known as the Federal Farm Loan Bureau, under the general supervision of a Federal Farm Loan Board." [Italics ours.]

Section 16 of the Act (U. S. C. §812) provides:

> "Shareholders of every joint stock land bank organized under this Act shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares."

Section 17 of the Act (U. S. C. §831) provides in part:

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* Foot Note: For convenience references to Title 12 United States Code are herein given as "U. S. C." and references to Federal Farm Loan Act as "F. L. A."

"That the Federal Farm Loan Board shall have power— . . .

(i) To exercise *general supervisory authority* over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for. [Italics ours.]

(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this Act."

Section 29 of the Act provides in part:

[U. S. C. § 961] That upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of any description the Federal Farm Loan Board may forthwith declare such association insolvent and appoint a receiver and require of him such bond and security as it deems proper: Provided, That no national farm loan association shall be declared insolvent by said board until the total amount of defaults of current interest and amortization installments on loans indorsed by national farm loan associations shall amount to at least $150,000 in the Federal land bank district, unless such association shall have been in default for a period of two years. *Such receiver, under the direction of the Federal Farm Loan Board,* shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, *with the approval of the Federal Farm Loan Board* or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, *and, on a like approval or order,* may sell all the real and personal property of such association *on such terms as the Federal Farm Loan Board* or said court shall direct." [Italics ours.]

[U. S. C. § 962] " . . . . Such receiver shall pay over all money so collected to the Treasurer

of the United States *subject to the order of the Federal Farm Loan Board* and also make report to said board of all his acts and proceedings. The Secretary of the Treasury shall have authority to deposit at interest any money so received." [Italics ours.]

[U. S. C. §963] " . . . Upon default of any obligation, Federal land banks and joint stock land banks may be declared insolvent and placed in the hands of a receiver by the Federal Farm Loan Board, and proceedings shall thereupon be had in accordance with the provisions of this section regarding national farm loan associations."

[U. S. C. §965] " . . . No national farm loan association, Federal land bank or joint stock land bank shall go into voluntary liquidation without the written consent of the Federal Farm Loan Board, but national farm loan associations may consolidate under rules and regulations promulgated by the Federal Farm Loan Board."

## Summary of Argument.

The question involved is one of procedure. Two Circuit Courts of Appeals in three decisions have approved the procedure adopted by the Farm Loan Board. 256 stockholders, of a total of 482, have paid their assessment in whole or in part in the aggregate sum of $507,925. Delay will increase the difficulty of further collections due to insolvency or other similar cause.

The construction of the Act is plain.

Administration of the Farm Loan Act is expressly placed under "the direction and control" of the Farm

Loan Board; the Board is "charged with the execution" of the Act, and broad supervisory and incidental powers are expressly vested in it. (F. L. A. §§1, 3, 17 (i) (j); U. S. C. §§641, 651, 831.)

The National Bank Act contains no such broad grant of general powers as the Farm Loan Act vests in the Farm Loan Board, yet the power to levy an assessment upon stockholders of an insolvent national bank is implied in the comptroller as essential to the efficiency and utility of the law. Similar considerations require the implication of such a power in the Farm Loan Board under the much broader provisions of the Farm Loan Act.

The procedure suggested by petitioner would burden creditors of the bank with the expense and delay of a double receivership including a statutory receiver to liquidate the assets and a judicial receiver to take over the proceeds, give notice to creditors, determine claims, enforce the stockholders' liability and make distribution. Stockholders of the bank are located in over thirty states and a court receivership would require ancillary proceedings in each of these states. It is plain that this duplication of receivership, with its accompanying expense and delay, cannot have been intended by the Congress.

Petitioner proposes to negative any implied power in the Farm Loan Board because the receivership provision of the Farm Loan Act has no express clause such as set forth in the National Bank Act, for enforcement of the stockholders' liability. The National Bank Act was adopted in 1864 and the Farm Loan Act in 1916. One great change in this interval was the development of legislation conferring increasingly large powers on administrative boards. Due to this

change, what was accomplished by one method under the National Bank Act (the vesting of powers in the Comptroller by a series of specific details) was accomplished in the Farm Loan Act by a different method (the vesting in the Farm Loan Board of broad administrative powers). It follows, naturally, therefore, that the National Bank Act has more specific provisions as to a receivership than the Farm Loan Act; and omission of the detailed provisions found in the National Bank Act from the receivership provisions of the Farm Loan Act does not, by any implication, negative the existence of such powers.

Joint stock land banks are public corporations created for governmental purposes. The Congress has deemed supervision of such agencies by the Farm Loan Board essential to the fiscal policies of the Government and such supervision and control, being necessary during periods of operation of such banks, the Congress must have intended to continue such control through insolvency.

The construction here maintained is that adopted by the Farm Loan Board and it should be given great weight.

Cases arising under state statutes are irreconcilable and are not controlling here. The governmental interest in these constitutional agencies is not present in the case of ordinary state corporations. Every presumption is in favor of complete administration of these constitutional agencies by the Government.

The Federal authorities, cited by petitioner, so far as they are in point, sustain the right of the statutory receiver to sue.

## ARGUMENT.

### I.

### The Question Involved Is One of Procedure and the Real Question in Issue Is One of Delay in Enforcing the Liability.

The substantive rights of the petitioner will not be affected by a reversal of the lower court, except to the extent that delay may increase the practical difficulties encountered by the statutory or court receiver, as the case may be, in enforcing the stockholders' liability.

At the time a similar power of assessment was implied in the comptroller in the case of a national bank, the court, in *Kennedy v. Gibson*, 8 Wall. 498, said:

> [8 Wall. 505] " . . . It would be attended with injurious consequences to forbid action against the stockholders until the precise amount necessary to be collected shall be formally ascertained. This would greatly protract the final settlement, and might be attended with large losses by insolvency and otherwise in the intervening time. The amount must depend in part upon the solvency of the debtors and the validity of the claims. Time will be consumed in the application of these tests, and the results in many cases cannot be foreseen. The same remarks apply to the enforced collections from the stockholders. A speedy adjustment is necessary to the efficiency and utility of the law; the interests of the creditors require it, and it was the obvious policy and purpose of Congress to give it. If too much be collected, it is provided by the statute, that any surplus which may remain after satisfying all demands against the asso-

ciation, shall be paid over to the stockholders. *It is better they should pay more than may prove to be needed than that the evils of delay should be encountered.*" [Italics ours.]

Similarly in *Korbly, Receiver, v. Springfield Institution for Savings, et al, 245 U. S. 330, 333,* the court held that the National Bank Act should not be given a technical construction which would so restrict the powers of the Comptroller as to delay and impede the settlement of the affairs of a bank and that the Act should be given a liberal interpretation to promote the expeditious winding up of a bank's affairs.

As pointed out in *Kennedy vs. Gibson,* 8 Wall. 498, 506, if by error of the assessing authority too large an assessment were made, the amount would not be lost to the stockholders, for the excess would be returned to them.

In the natural course of events, delay in enforcing assessment agains the stockholders will result in insolvency of some and inability to collect from others because of changes of address, death, or otherwise. The method of procedure adopted by the Farm Loan Board and approved by the Circuit Court of Appeals for the Seventh Circuit in this case also has been similarly approved by the Circuit Court of Appeals for the Eighth Circuit in the case of *Krauthoff v. Kansas City Joint Stock Land Bank of Kansas City, et al.,* (Appendix pp. 35-45, before Judges Kenyon, Johnson and McDermott, and *Krauthoff v. Kansas City Joint Stock Land Bank,* 23 Fed. (2d) 71, (Before Judges Lewis, Pollock and Scott). Under the circumstances, there would seem no justification for continued litigation.

## II.

## The Federal Farm Loan Board has Wide General Powers.

The Federal Farm Loan Act rests fundamentally on the grant to the Farm Loan Board of comprehensive general powers, so far reaching as necessarily to be exclusive.

Section 1 of the Act (U. S. C. §641) provides:

> "That this Act may be cited as the 'Federal Farm Loan Act.' Its administration shall be *under the direction and control of the Federal Farm Loan Board* hereinafter created." [Italics ours.]

Section 3 of the Act (U. S. C. §651) provides that the Federal Farm Bureau is *"charged with the execution of this Act."*

Section 17 of the Act (U. S. C. §831), provides:

> "That the Federal Farm Loan Board shall have power— . . .
>
> (i) To exercise *general supervisory authority* over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for. [Italics ours.]
>
> (j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this Act."

## III.

## Petitioner's Construction of the Farm Loan Act, if Adopted, Will Involve Duplication of Receivership, Together With Increased Expense and Delay, and Will Necessitate Ancillary Equity Suits in Thirty States.

### THE CONGRESS COULD NOT HAVE INTENDED SO UNREASONABLE AN INTERPRETATION.

Counsel for the petitioner attempt, by a comparison of the provisions of the Federal Farm Loan Act with those of the National Bank Act, to establish an intention to vest all rights and duties, subsequent to sequestration of the assets of an insolvent Joint Stock Land Bank, in a court receiver, saying with reference to the statutory receiver appointed by the Farm Loan Board:

> [*Petitioner's Brief*, p. 21] "The receiver is simply a collector or conservator of the assets of the bank. He takes possession of the books, records and assets . . . collects all debts, . . . sells all of the assets of the association . . . and pays over all money collected to the treasurer of the United States . . . His work is then performed, . . . There is no suggestion anywhere in the law that the receiver has anything whatever to do with the shareholders or their personal liability, or with the creditors of the bank and their claims against it."

> [*Petitioner's Brief*, p. 25] "The Banking Act has a complete system for the enforcement of the individual liability of stockholders. . . . .

> [Reviewing provisions for notice to creditors, allowance of claims, payment of dividends, etc., in National Bank Act, U. S. C. §§191, 192, 193, 194.] . . . In the Farm Loan Act all of these provisions are missing. No provision is made for giving notice to creditors of the bank for a limitation of the time of filing claims, for the allowance of claims, or the payment thereof, for the return of any surplus to the shareholders, or for the payment of the expense of the receivership. *It is therefore perfectly apparent from the statutes that the receiver of the Farm Loan Association was not intended to have any powers or duties whatever with regard to the enforcement of the individual liability of the stockholders, the proof of claims against the association, their payment and the final distribution.*" [Italics ours.]

Petitioner's brief thus assumes that the Congress intended to make the creditors of the Bank bear the expense of a double receivership including: first, a proceeding by the statutory receiver appointed by the Farm Loan Board to collect and liquidate the assets, paying the proceeds over to the Treasurer of the United States; and secondly, a proceeding by a judicial receiver appointed at the instance of a creditor in a court of equity to take over the fund in the hands of the Treasurer, give notice to creditors, enforce the stockholders' liability and make all distributions to the creditors.

This suggested interpretation of the Farm Loan Act is expressly contrary to the principles governing the liquidation of such institutions established in *Kennedy v. Gibson*, 8 Wall. 498, 505, (supra pp. 9-10) and *Korbly, Receiver, v. Springfield Institution for Savings, et al.*, 245 U. S. 330, 333.

The expense of an additional receivership in itself seems controlling on the question of intention.

The duplication of procedure and expense seems an absurdity inasmuch as the Receiver appointed by the Farm Loan Board is an officer of the United States subject to the order of the Board and represents creditors as well as the corporation.

Under the provisions of Section 29 of the Farm Loan Act (U. S. C. §§961, 962, 963), such receiver:

(1) Executes bond to the United States for the faithful performance of his duties;

(2) Assumes control as an officer of the United States:—
*United States v. Weitzel*, 246 U. S. 533, 540, 541;
*Krauthoff v. Kansas City Joint Stock Land Bank, et al.*, 23 Fed. (2d) 71, 73;
*Steele v. Randall*, 19 Fed. (2d) 40, 42.

(3) Pays all moneys collected to the Treasurer of the United States "*subject to the order of the Federal Farm Loan Board.*"

(4) Represents creditors as well as the corporation:—
*Kennedy v. Gibson*, 8 Wall. 498, 506.

In addition to the double receivership, it will be necessary, if the statutory receiver is without authority to enforce the stockholders' personal liability, to have ancillary proceedings in more than thirty states in order that the liability may be enforced.

*Great Western Mining Co. v. Harris*, 198 U. S. 561, 574.

The difficulties and expense incident to the enforcement of the stockholders' personal liability by a court receiver is illustrated by the history of attempted enforcement by such a receiver in Minnesota.

*Hale v. Allinson,* 188 U. S. 56, 65.

How the court receiver could acquire possession of the fund collected by the statutory receiver and which is, under the statute, deposited with the Treasurer of the United States "subject to the order of the Federal Farm Loan Board" is a question of considerable complexity. The members of the Board reside for purposes of territorial jurisdiction at their official residence, to-wit: The District of Columbia.

*Butterworth v. Hill,* 114 U. S. 128, 132.

Any attempt of the United States Court for the Eastern District of Wisconsin to subject the Treasurer of the United States to its jurisdiction for the purpose of exercising control over the fund specifically vested by Congress in an executive branch of the Government would inevitably result in "inextricable confusion and chaos."

In the light of the above authorities illustrating the complicated and expensive procedure necessary to enforce the stockholders' personal liability through a court receiver, it is plain that the Congress could not have intended to burden the creditors of insolvent joint stock land banks:

(a) with the expense of two receiverships,

(b) with the expense and uncertainty of ancillary proceedings,

(c) with the delay incident to appointment of a court receiver in a case where a statutory receiver is already in existence acquainted with the facts and competent to determine claims and enforce the stockholders' liability under the direction of an executive department of the Government charged with the execution of the law and the direction and control of its administration, and

(d) with the uncertainty, delay and expense arising out of the necessity for a creditor applying to a court for the appointment of a judicial receiver to continue the liquidation following sequestration of the assets of the bank by its statutory receiver.

As stated by the Circuit Court of Appeals for the Eighth Circuit in *Krauthoff v. Kansas City Joint Stock Land Bank* (Appendix; infra, pp. 35-45):

> "It is hardly to be presumed that Congress intended in carrying out the purposes of this Act to have various receivers for different kinds of assets, resulting merely in inextricable confusion and chaos. The Act should be carried out according to its terms and not lose its efficiency in a maze of philosophical technicalities. It seems to us the Act is perfectly plain, that the Farm Loan Board is charged with carrying out its provisions and to see 'that the moneys are applied toward the satisfaction of the bonds.'"

The interpretation suggested by counsel for the petitioner would ignore the rule that all laws are to be given a sensible construction and that where a literal application of a statute would lead to absurdity or where a particular construction of a statute would occasion great inconvenience or produce inequality and

injustice, that view is to be avoided if a reasonable interpretation can be given to it consistent with the legislative purpose.

*United States v. Katz*, 271 U. S. 354, 357.
*Knowlton v. Moore*, 178 U. S. 41, 77.

## IV.

### The Fundamental Question is the Scheme Intended by Congress; and an Express Grant of Power to Levy an Assessment is Unnecessary, Being Implied, as Necessary, to Effectuate the Scheme of the Act.

Petitioner contends *(Petitioner's Brief*, pp. 4 to 18) that the particularization of powers granted the Farm Loan Board and the failure expressly to vest power in the Board to levy an assessment upon stockholders negatives the existence of such a power in the Board and, therefore, none can be implied.

The fact that the Farm Loan Act vests specific duties in the Farm Loan Board with reference to matters upon which it is intended to have the Board act personally and not by delegation of its authority, should not prevent implication of a power of assessment. It was wise to give form to the Act by vesting certain duties specifically in the Farm Loan Board and this was done without intending thereby to limit the general powers of the Board.

The powers given to the Farm Loan Board under the Farm Loan Act are much broader than those given

to the Comptroller under the National Bank Act. The National Bank Act vests a large number of specific duties in the Comptroller of the Currency (see summary thereof, infra page 21); and it grants no general powers such as Section 1 and Section 17 (i) and (j) of the Farm Loan Act (U. S. C. §§641, 831) confers. There therefore is much greater reason for implying powers in the Farm Loan Board than in the Comptroller.

The National Bank Act contains no provision authorizing the Comptroller to make an assessment upon stockholders in the case of an insolvent bank; yet this court held such a power clearly implied.

*Kennedy v. Gibson*, 8 Wall. 498.

The statutes (U. S. C. Sec. 55) make express provision for assessment of stockholders of a national bank only for payment or restoration of the capital either because the capital is not paid up as required by law or the capital stock has been impaired by losses. This express statutory provision for assessment has no relation to the stockholders' personal liability for debts of the bank.

*Commercial National Bank v. Weinhard*, 192 U. S. 243, 247, 252.

There is no express statutory provision in the National Bank Act for the important function of determining the amount of the stockholders' liability and making an assessment. On the petitioner's theory *(Petitioner's Brief*, p. 27) this absence of express grant of power in the National Bank Act would require judicial proceedings for an assessment, presumably by a proceeding in equity brought by the statutory receiver.

However, this Court definitely settled the law to the contrary, holding power implied in the comptroller to make a conclusive assessment.

*Kennedy v. Gibson*, 8 Wall. 498, 505.
*Casey v. Galli*, 94 U. S. 673.
*U. S. v. Knox*, 102 U. S. 422.
*Bushnell v. Leland*, 164 U. S. 684.
*Rankin v. Barton*, 199 U. S. 228.
*Christopher v. Norvell*, 201 U. S. 216.

In reaching the conclusion that power to levy the assessment must be implied in the Comptroller, this court, in the *Gibson case*, 8 Wall. 498, laid most stress on the delay which would result, the "large losses by insolvency and otherwise in the intervening time"; the "time" which would be "consumed in the application of these tests," the necessity for a "speedy adjustment" as essential to "the efficiency and utility of the law," the fact that the interests of creditors required it, and that it "was the obvious policy and purpose of Congress to give it."

These considerations apply equally in the case at bar; but the reasons for implying power to levy a conclusive assessment apply much more strongly to the Farm Loan Board than to the Comptroller because of the wide general powers conferred on that Board.

## V.

## The Differences in Structure of the National Bank Act and Farm Loan Act Make Inferences From the Phraseology of the Former Inapplicable to the Latter.

### THE STRUCTURE OF THE NATIONAL BANK ACT, ADOPTED IN 1864, SHOULD NOT CONTROL THE INTERPRETATION OF THE FEDERAL FARM LOAN ACT, ADOPTED IN 1916.

Petitioner proposes to negative any implied power in the Farm Loan Board because the receivership provision of the Farm Loan Act has no express clause on stockholders' liability such as is set forth in the National Bank Act *(Petitioner's Brief* pp. 22-25). His argument rests essentially on a comparison of a single section of each of the Acts, and it disregards the grant of wide general powers to the Farm Loan Board and the consequent difference in the structure of the Acts.

In considering the differences between the two Acts one must keep in mind that the National Bank Act was adopted in 1864 and the Farm Loan Act in 1916. One great change in this interval was the development of legislation delegating increasingly large powers to administrative boards. This change is reflected in the Farm Loan Act.

Examined in the light of this change in the method of legislating, it will be seen that what was accomplished by one method under the National Bank Act (the vesting of power in the Comptroller by a series of

specific details) was accomplished in the Farm Loan Act by a different method (the vesting in the Farm Loan Board of broad administrative powers).

An examination of the provisions of the National Bank Act makes clear this difference in structure and corresponding necessity for difference in construction of the National Bank Act and the Federal Farm Loan Act.

The fundamental duty of the Comptroller of the Currency is to require compliance with the Statutes regarding national bank notes and to keep accurate watch of them. (U. S. C. §§1, 26-28, 101-110, 124, 132-134, 137, 138, 151-153, 168-178, 185). So far as the affairs of the bank are concerned, the Comptroller's powers are granted in a series of specific details, such as approval of the bank's name or location (U. S. C. §§22, 30); definition of purchasable investment securities (U. S. C. §24); rules for acting as insurance or real estate broker (U. S. C. §92); approval of stock dividends or reduction of stock (U. S. C. §§58-59); approval of conversion of state bank (U. S. C. §35); or action as to branches (U. S. C. §36); or consolidation (U. S. C. §§33, 34, 34a). Further the National Bank Act has great detail as to the general conduct of the bank's business (U. S. C. §§55, 56, 60, 62, 81-89, 94, 121, 122, 125, 127, 141-146, 161-164).

No general grant of powers to the Comptroller is contained in the National Bank Act.

The Federal Farm Loan Act on the other hand contains a comprehensive general grant of powers to the Farm Loan Board (F. L. A. §§1, 17 (i) and (j) U. S. C. §§641, 831 see supra p. 11).

It follows naturally, therefore, that the National Bank Act has more specific provisions as to a receivership than the Farm Loan Act.

Following out the scheme of specific powers, the National Bank Act expressly gives the Comptroller power, in the case of a receivership:

(a) To give notice to creditors (U. S. C. §193),

(b) To approve claims (U. S. C. §194),

(c) To make ratable dividend of the money paid over to him by the Receiver (U. S. C. §194),

(d) To return any excess to the stockholders (U. S. C. §194),

(e) To pay the expenses of the receivership out of the assets of the Association (U. S. C. §196),

(f) To call a meeting of stockholders after payment of claims for the purpose of determining whether liquidation shall continue (U. S. C. §197), and

(g) To protect equities in mortgaged or pledged property (U. S. C. §§198, 199, 200).

In the Farm Loan Act none of these powers are expressly set forth but that Act has provisions (lacking in the National Bank Act) which confer wide general powers on the Farm Loan Board.

The petitioner disregards the wide grant of general powers to the Farm Loan Board; he bases his argument solely on this difference in phraseology of the grants of specific powers in the National Bank Act and the Farm Loan Act and claims that lack of express specification of such powers in the Farm Loan Act evidences an intention to withhold them (See *Petitioner's brief*, pp. 14-15).

Obviously application of such a rule of construction would lead to chaos. Powers essential to even the limited receivership permitted by the petitioner's theory would be lacking (U. S. C. §§196, 198, 199, 200). The impossibility of such a rule is evidenced by the costly and unwieldy double receivership which the petitioner is led to devise.

It becomes apparent, therefore, that any limitation of the powers of the Farm Loan Board by reference to the phraseology of the National Bank Act would be entirely inconsistent with the purpose and tenor of the Farm Loan Act and contrary to the Act's plain construction.

Far from the Farm Loan Act conferring less power on the Farm Loan Board than the Comptroller has in a receivership, as contended by the petitioner, the fact is that the Farm Loan Act expressly shows an intention to give the Farm Loan Board greater power than the Comptroller in such a case, because a national bank receiver may make sales of assets only on order of a court (U. S. C. §192) whereas a joint stock land bank receiver may make sale on order either of a court or the Farm Loan Board.

Section 29 of the Farm Loan Act (U. S. C. §961) provides:*

> [U. S. C. §961] "Such receiver, *under the direction of the Federal Farm Loan Board*, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, *with the approval of the Federal Farm Loan Board* or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, *on a like approval or order*, may sell all the real and personal property of such association on such terms as the Federal Farm Loan Board or said court shall direct." [Italics ours.]

## VI.

## The Joint Stock Land Banks are Constitutional Agencies of Government; and their Administration Under the Direction and Control of the Federal Farm Loan Board Necessarily Implies a Single Receivership and Enforcement of the Personal Liability of Stockholders Under Direction of that Board.

### 1.

### *Joint Stock Land Banks Were Created by the Congress to Serve as Fiscal Agents of the Government; They Were Created for Public and Not Private Purposes.*

The constitutionality of the Federal Farm Loan Act was definitely established in *Smith v. Kansas City Title & Trust Company*, 255 U. S. 180, 209, 210, 211,

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* The statement of this section at page 33 of petitioner's brief is inaccurate in omitting the words "with the approval of the Federal Farm Loan Board or" and in substituting a capital for a lower case initial letter in the following word: "upon."

where the court held that the designation of joint stock land banks as depositaries of public money and authorization of their employment as financial agents of the Government brought them within the constitutional power of the Congress to facilitate the fiscal operations of the Government and that whether technically banks or not, these organizations may serve the governmental purposes declared by the Congress for their creation.

In accord:

*Osborn v. Bank of the United States*, 9 Wheat. 738, 860, 861.
*Van Reed v. Peoples National Bank of Lebanon*, 198 U. S. 554.

2.

*Proper and Expeditious Administration of the Affairs of Joint Stock Land Banks is Essential to the Fiscal Policies of the Government.*

The rule was early laid down that national banks as instruments designed to be used to aid the government are within the discretionary power of the Congress; and that the power of the Congress over these banks is exclusive.

*Farmers & Merchants Natl. Bank v. Dearing*, 91 U. S. 29, 33, 34.

The same principle applies to joint stock land banks.

3.

*The Congress Intended to Continue Governmental Control Through Insolvency Proceedings.*

No one disputes the necessity for supervision of joint stock land banks by the Federal Farm Loan Board prior to insolvency. If the Congress has deemed such supervision essential to furtherance of the fiscal policies of the Government while joint stock land banks are solvent, certainly the winding up and dissolution of such banks should be no less important in its effect upon such policies.

That was the principle given effect in *Cook County National Bank vs. United States*, 107 U. S. 445, 448.

4.

*The Farm Loan Board's Powers are Exclusive.*

On principle, it seems essential to preservation of the constitutional purpose of joint stock land banks to assist in the fiscal operations of the Government, that the courts refuse to interfere with the officers of the Government vested with authority to supervise and direct these agencies.

> *Krauthoff v. Kansas City Joint Stock Land Bank*, 23 Fed. (2d) 71, (C. C. A. 8th Cir. 1927).

In similar cases involving the administration of insolvent national banks the courts have held the admin-

istrative machinery established by Congress to be exclusive.

*Liberty National Bank of South Carolina v. McIntosh*, 16 Fed. (2d) 906, 909-10 (C. C. A. 4th Cir. 1927).

*Gockstetter v. Williams*, 9 Fed. (2d) 354, 356 (C. C. A. 9th Cir. 1925).

*Altman v. McClintock*, 20 Fed. (2d) 226, 229, 231 (Dist. Ct., Dist. of Wyo. 1927).

5.

*The Stockholders' liability is to be applied With and in Aid of the Assets of the Bank Toward the Satisfaction of Its Obligations.*

As above set forth, we believe it clear that the Federal Farm Loan Act intends the administration of joint stock land banks to be under the exclusive direction and control of the Federal Farm Loan Board. Such exclusive direction and control in the case of insolvency necessarily imports that the Farm Loan Board should have exclusive direction of the means of realizing payment of the Bank's obligations. This inclusion is emphasized by the fact that the great mass of every joint stock land bank's obligations necessarily are its bonds which are provided for specially and in detail by the Farm Loan Act. (F. L. A. §§16, 18, 19, 20, 21, U. S. C. §§814; 816-821; 841-864.)

As stated by this Court with reference to the similar stockholders' liability of national banks in *Richmond v. Irons*, 121 U. S. 27, 50: "Admitting that this liability [of the stockholders] is not strictly an asset

of the bank, . . . yet it is treated as a means of creating a fund to be applied with and in aid of the assets of the bank toward the satisfaction of its obligations."

The case of *McNeill v. Pace*, 69 Fla. 349; 68 So. 177, (1915) evidences the tendency of the courts where the statute permits of such a construction to hold that a statutory receiver may enforce the stockholders' personal liability.

The petitioner himself recognizes that the levy of an assessment upon stockholders and the enforcement of the collection of the stockholders' liability by suit at law are among the powers which "all relate to the liquidation and winding up of the bank and are essential to that operation." *(Petitioner's Brief*, p. 15).

6.

*Purpose Indicated in Heading of Section 29 of Act.*

Section 29 of the Farm Loan Act (U. S. C. §961) is designated as providing for "Dissolution and Appointment of Receivers". An examination of Section 29 discloses the purpose of the appointment of a receiver to be the winding up and dissolution of the corporation. From this it would seem to follow that an interpretation which authorizes the receiver completely to administer the affairs of the bank should be favored over one which requires enforcement of the stockholders personal liability and distribution of the assets of the bank in a separate proceeding in a court of equity.

*Krauthoff v. Kansas City Joint Stock Land Bank*, 23 Fed. (2d) 71 (C. C. A. 8th Cir. 1927).

*State ex rel. Stone v. Union Stock Yards etc. Bank, et al.*, 103 Ia. 549; 70 N. W. 752.

*Wilson et al v. Book*, 13 Wash. 676; 43 Pac. 939.

7.

*Payment of Assessments Without Suit Should be Possible.*

Certainly, there should be some place where a stockholder can pay the assessment without suit, and the logical person for this purpose and for the enforcement of the liability is the statutory receiver, appointed by the Federal Farm Loan Board .

8.

*Right of Offset Against Dividends on Bonds Held by Stockholders Should be Preserved.*

Further if the statutory receiver is not the proper party to enforce the stockholders' liability, then the right to offset dividends on bonds or other claims in the hands of stockholders may be lost.

See—

*King, et al. v. Armstrong*, 50 Ohio State 222; 34 N. E. 163.

*Hynes v. Illinois Trust & Savings Bank et al.*, 226 Ill. 95; 80 N. E. 753; 10 L. R. A. (N. S.) 472.

## VII.

### Construction of Act by Farm Loan Board.

The construction here maintained by the respondent is that adopted by the Federal Farm Loan Board (Rec. p. 4) and such construction should be given great weight, particularly where, as in this case, administration of the law is under "the direction and control" (Farm Loan Act §1 U. S. C. §641) of the Board, the Board is "charged with the execution of this Act" and broad supervisory and incidental powers are vested in it by express provisions of the act.

*Federal Farm Loan Act*, §§1, 3, 17 (i) and (j) 29. (U. S. C. §§641, 651, 831 (i) and (j), 961 and 962.)

This court will, if possible, follow the construction placed on a statute by the department of the government charged with its execution, particularly where the statute itself directs such department to make the necessary regulations to carry it into effect.

*Jacobs v. Prichard*, 223 U. S. 200, 213.
*U. S. v. Hermanos y Compania*, 209 U. S. 337,
*Swigart v. Baker*, 229 U. S. 187,
*Blanset v. Cardin*, 256 U. S. 319,
*National Lead Co. v. U. S.*, 252 U. S. 140.

## VIII.

## Cases Under Other Statutes.

### 1.

*Cases Arising Under State Statutes are Practically Irreconcilable and are not Controlling Here.*

Fundamentally in cases arising under state laws the essential question always is the scheme intended by the legislature; in other words, what liability did the legislature intend to create and what remedy did the legislature intend therefor?

*Terry v. Little,* 101 U. S. 216, 217.

In considering decisions under state laws, the peculiar phraseology of the state act must be kept in mind, such as whether the liability is "to creditors" or "for debts," etc., and what, if any, remedy the state statutes provide, expressly or impliedly.

*Patterson v. Lynde,* 106 U. S. 519 at 520.

Where the law fails to provide for a statutory receiver to administer the affairs of the insolvent corporation, a proceeding by creditors' bill necessarily is the only available remedy and the authorities so holding are not in point here.

A statutory receiver "to close up the affairs of the company" has been held to have power to enforce the double liability under language similar to that here.

*McNeill v. Pace,* 69 Fla. 349; 68 So. 177.

In accord:

*Wilson v. Book,* 13 Wash. 676, 43 Pac. 939.

This is so, even where the liability is "to creditors."

*State ex rel Stone v. Union Stock Yards, etc., Bank*, 103 Ia. 549, 70 N. W. 752, 753.

In cases arising under state statutes, the federal courts deal with the matter as the construction of a state statute and follow the state rules, and that is the first point for consideration.

*Terry v. Little*, 101 U. S. 216, 217.

The controlling governmental interest in administration present in the case of constitutional agencies of the Government, such as joint stock land banks, is not present in the case of ordinary corporations formed under general state laws. Every presumption should be in favor of complete administration by the Government where, as in this case, such administration is obviously in furtherance of the constitutional purpose.

2.

*The Federal Authorities Cited by Petitioner, so far as They are in Point, Sustain the Right of the Statutory Receiver to Sue.*

In *Richmond v. Irons*, 121 U. S. 27 (cited in *Petitioner's Brief*, p. 28) no statutory receiver had been appointed and a creditors' bill was the only method for enforcement of the liability.

The case of *King v. Pomeroy*, 121 Fed. 287 (cited in *Petitioner's Brief*, p. 21) is distinguishable on similar grounds.

Both of these cases in fact lend their support to the interpretation of the law which, in a case where a statutory receiver has been appointed, would permit such receiver to enforce the personal liability of stockholders.

In both of these cases (*Irons* Case, 121 U. S. 27, 49 and *Pomeroy* Case, 121 Fed. 287, 291) the court speaks of the enforcement of the stockholders' liability as a part of the liquidation of the bank, at least so closely connected with it as to constitute parts of one series of transactions.

Further, these cases must be read in the light of the fact that a statutory receiver of a bank represents creditors as well as the corporation and should enforce all rights.

*Kennedy v. Gibson*, 8 Wall. 498, 506.

## CONCLUSION.

The whole argument of the petitioner reduces itself to an inference from omission in the Farm Loan Act of the express provision for enforcement of the stockholders' liability set forth in the National Bank Act. The argument overlooks the fact that even under the National Bank Act the Comptroller's power of assessment of this liability is implied; it ignores the broad general powers given to the Farm Loan Board which are not given to the Comptroller; and it disre-

gards the confusion, delay and waste that would result from this construction.

No reasonable construction of the Act can justify a second receivership; the existence of the statutory receiver acting under the direction of the Farm Loan Board, vested by statute with the broadest powers of administration and liquidation necessarily excludes any possibility of an accompanying judicial receivership. The Congress certainly could not have intended so peculiar or unusual a result; on the contrary the intention of the Act is plain to vest the right to enforce the stockholders' personal liability in the receiver appointed by the Farm Loan Board.

The question involved is essentially one solely of procedure. The construction of the Act is plain. The decisions of the Circuit Court of Appeal are in accord and in conformity with applicable decisions of this court; and the receivership ought not to be subjected to the expense and delay of continuance of the litigation.

We respectfully submit that the petition for a writ of certiorari should be denied.

EDWIN S. MACK,
ARTHUR W. FAIRCHILD,
Counsel for Respondent.

## Appendix

## UNITED STATES CIRCUIT COURT OF APPEALS
### EIGHTH CIRCUIT.

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No. 8151.—December Term, A. D. 1928.

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EDWIN A. KRAUTHOFF,
Appellant,

vs.

KANSAS CITY JOINT STOCK LAND BANK OF KANSAS CITY, MISSOURI, et al.,
Appellees.

Appeal from the District Court of the United States for the Western District of Missouri.

Before Kenyon, Circuit Judge, and Johnson and McDermott, District Judges.

KENYON, Circuit Judge, delivered the opinion of the court.*

The Kansas City Joint Stock Land Bank organized, under the Federal Farm Loan Act, became insolvent in 1927, and was by the Federal Farm Loan Board, under the provisions of the Federal Farm Loan Act (12 U. S. C. A., Chap. 7, sections 961 and 963), placed in the hands of a receiver, who took possession

* Foot Note: Inasmuch as the opinion of the court covers a number of questions, parts of the opinion bearing on the principles involved in the enforcement of the stockholders' double liability have been printed in blackface type.

of all the assets of the Bank of every description. Appellant after that time purchased certain of the bonds of said bank for the express purpose, as admitted in his argument in this Court, of bringing suits thereon for himself and for clients whom he hoped to secure. Two of these he brought as plaintiff in the District Court of the United States for the Western District of Missouri, the numbers of which in this Court are 7874 and 7939, and will be designated herein by those numbers, one in the District Court of the United States for the District of Kansas (No. 7938, this Court), and one was brought by a stockholder named Raab in the District Court of the United States for the Western District of Missouri, in which appellant was attorney for the plaintiff (No. 7875, this Court). The defendants were substantially the same in all of these cases. The real object and purpose of these four suits was to oust the receiver appointed by the Federal Farm Loan Board, and to substitute a receiver appointed by the Court to take charge of the assets. The previous suits were dismissed by the trial courts, and their action was affirmed by this Court (23 F. (2d) 71 and 73), with a modification in one of them upon petition for rehearing that the dismissal by the District Court be without prejudice.

This Court decided in these cases that the Act under which the Kansas City Land Stock Bank was created prescribed the manner in which it should be wound up in case of insolvency; that the situation was similar to the insolvency of a national bank; that the receiver appointed by the Board was a public officer, and that he was in possession of the assets in dis-

charging his duty at the time the suits were brought, and that the Court had no right to interfere with such receiver in the proper discharge of his duties. In Cases numbered 7874, 7875 and 7939 (23 F. (2d) 71), argued and decided together, this Court said that questions might arise during receivership that would require judicial determination.

Appellees urge that every question involved in the present case has been determined in some of the previous ones between substantially the same parties.

We have examined appellant's brief of 198 pages, which evidences much research and philosophical meditation, to discover what, if any, issues are now presented that have not been passed on by this Court in some of these cases.

As a type of the various cases, we refer to Case No. 7874. There the prayer of the petition is almost identical with the prayer for relief in this case. In that case appellant asked judgment against the Land Bank in the sum of $5,000 with interest, and for a lien upon the assets in the hands of the registrar, Ryker; that he have judgment for his interest in the trust fund, and that the same be ascertained; that the Court appoint a receiver to take possession of the bank's property of every kind and character, including that pledged as security for the bonds; that the total amount of bonds be ascertained, together with ownership; that an accounting and discovery be had of all transactions of the Kansas City Joint Stock Land Bank, or of any individuals or corporations in connection therewith. **These matters are all covered by the prayer in this suit, which however asks in addition that the receiver to be appointed be invested**

**with authority in equity to enforce the outstanding stockholders' liability due and owing by the stockholders of the Kansas City Joint Stock Land Bank of Kansas City. This question was however referred to in the former opinions of this Court, and was in fact the basis of Suit No. 7939. On that subject this Court said (Krauthoff v. Kansas City Joint-Stock Land Bank, 23 F. (2d) 71, 72-73): "It cannot be thought that there was any other purpose in making the assets of the insolvent bank subject to the order of the board than the use of them,—and the stockholder's liability if necessary,—in settlement of the insolvent estate,—to pay the bank's debts; nor could those debts be paid until its creditors and the amount due each should be ascertained. A receiver appointed by the Comptroller must report to him, and a receiver appointed by the board must report to it."**

Appellant devotes some seventy-four pages of his brief to the question of pledged assets. This question was in Case No. 7938, appeal from the District Court of Kansas. Judge Pollock in the District Court said that the "Receiver is entitled to the possession of the securities pledged back of the bonds now outstanding, either in this jurisdiction or any other jurisdiction or location, and in my opinion they are no more subject to be wrested from his possession and control by a receiver appointed by this court than by any other person. As the law under which the bonds owned by plaintiff were issued so provides, it must be held, in my judgment, this court is powerless at the suit of plaintiff, who, by the very act of purchasing the bonds,

consented a receiver, appointed as was defendant Compton, should in case of insolvency of the Bank, take possession and hold the same to be applied as the law directs." This Court upheld that decision and in a per curiam opinion said: "It (the suit) was brought by a creditor who owned bonds issued by Kansas City Joint Stock Land Bank of Kansas City, Missouri, in his own behalf and in behalf of all other creditors who might wish to join in the suit. The bill asks the court to appoint a receiver of the farm mortgages and United States Government Bonds pledged with C. A. Ryker, registrar, as security for the payment of the bonds. Ryker resides at Wichita, Kansas, and the suit was brought in that district because that was the situs of the property that appellant sought to have impounded in receivership. The ultimate relief sought was the same as that in the other cases." A petition for rehearing therein was denied. So it appears the question of pledged collateral and its protection was before this Court in the prior cases.

It is entirely within bounds to say that every question presented on this appeal has been passed on by this Court in one or the other of the former appeals in cases between the same plaintiff (appellant here) and substantially the same defendants (changes in defendants being merely nominal). The only difference in this case is that while in the other suits brought by the appellant he sued on five bonds; here he adds an additional bond of $1,000, on which it is alleged that the interest due is unpaid.

In Case No. 7874, this Court said: "The board found the joint-stock bank to be in default of its obligations, that it was insolvent, and in May, 1927, placed

it in the hands of William R. Compton as its receiver." Therefore it appears that when that case was considered there had been defaults upon the part of the bank in the payment of its obligations, and in the bill in Case No. 7874 is this allegation: "plaintiff further states that on or about the 1st day of May, 1927, the Kansas City Joint Stock Land Bank of Kansas City, Missouri, made default of its outstanding Federal Loan Bonds, the interest of which had matured on that date." So that while the specific question of default in interest on this bond was not before the court in the former appeals, the cases were considered on the theory that defaults in the obligations of the Land Bank had occurred.

Notwithstanding the fact that appellant in its reply brief states that it does not in this action seek to substitute a Court receivership for the statutory receivership, and that it is asking the court to compel a statutory receiver to fully discharge his duties and to appoint a receiver only in case the present receiver does not discharge his duty as receiver as ordered by the Court or as lacking in the power to do so, we are satisfied that the whole purpose of this bill, as in the other cases, shows that this is exactly what has been and is sought to be done. The only way that appellant can work out the theories he has advanced in his brief is to secure the displacement of the present receiver and to have one appointed by the Court. This suit is to all intents and purposes the same as Case No. 7874; though perhaps dressed in a slightly different garb, it is merely an ingenious attempt to retry questions that were supposed to have been determined in that case.

This case would end here by application of the doctrine of res judicata, *Cromwell v. County of Sac*, 94 U. S. 351; *Radford v. Myers*, 231 U. S. 725; *Hart Steel Co. v. Railroad Supply Co.*, 244 U. S. 294; *United States v. Moser*, 266 U. S. 236; *North Carolina R. R. v. Story*, 268 U. S. 288; *Union Cent. Life Ins. Co. v. Drake*, 214 F. 536, were it not that on rehearing in Cases numbered 7874, 7875 and 7939, this Court said: "On Consideration Whereof, It is now here ordered by this Court that the decree of this Court entered on November 28, 1927, be, and it is hereby, modified and amended so as to provide that the dismissal of the action in the District Court of the United States for the Western District of Missouri, be without prejudice and thus modified the decree of said District Court will stand affirmed by this Court in accordance with the opinion heretofore filed on November 23, 1927."

Appellant urges in its brief that the Court modified the affirmance by providing that the dismissal be "without prejudice", thus recognizing that in another case involving the same subject matter other issues might be presented. It is doubtful if the binding effect of the doctrine of res judicata was not destroyed by the modification of the Court upon rehearing. We do not think the Court intended that the useless performance of trying the same case over again was to be indulged in. It had tried in its opinion to guard against any contention that its holding limited a court of competent jurisdiction from consideration of questions that might arise during the receivership. We have examined the petition for rehearing in Case No. 7874, and the same questions as argued upon the hear-

ing were reiterated there, but it was especially called to the attention of the Court that it had not made clear whether or not defendants would be subject to suit under proper circumstances calling for judicial interference, and we think that is what the Court desired to make clear in granting the modification of the opinion. However the language of the modification is broad and this Court in *Harrison v. Remington Paper Co.*, 140 F. 385, 399, said: "Rulings and decisions in the course of an action which is finally dismissed without prejudice adjudge nothing because the final judgment by its terms is that nothing has been adjudicated, and this fact is the only res adjudicata. Such a judgment determines that the parties are left as free to litigate every issue in the action dismissed as they would have been if it had never been commenced."

In No. 7938, the case from Kansas, no rehearing was granted, so the matters there determined stand as res judicata.

While probably the holding of this Court in Numbers 7874 and 7939 cannot technically be regarded as res judicata because of the order on rehearing, yet the reasoning of the Court is entirely in accord with our present conclusions as to the matters there discussed and here involved.

**As to the question of a Court receiver to enforce the stockholders' liability under the Federal Farm Loan Act, since the former decisions, the Court of Appeals of the Seventh Circuit in the case of Green, Receiver, v. Wheeler, decided December 13, 1928, has held that a receiver appointed by the Federal Farm Loan Board has the power to make an assessment againt the stock-**

**holders similar to the power of the Comptroller under the National Banking Act to make assessments against stockholders of a bank, and said: "We are of opinion that, without specific provision for suit by the receiver against the stockholders, the purpose of the Farm Loan Act was to provide a continuous, effective and complete means of liquidating the debts of insolvent concerns under the supervision, direction and control of the Board." With this we agree.**

On the question concerning pledged securities and the protection of pledged collateral, we have before referred to the holding of the Kansas District Court affirmed in this Court in No. 7938, which opinion has been in no way modified.

On page 159 of appellant's brief, he states: "The appointment of a receiver is merely incidental to the relief prayed by the plaintiff. The assets for which the appointment of a receiver is prayed, are the assets which are pledged for the payment of the bonds, assets in which the defendant Langworthy, as statutory receiver, has no right of possession, unless and until the debt for which such assets were pledged has been paid. It is not contended in the present suit that the District Court has the power to appoint a receiver for any assets within the lawful possession of the statutory receiver under the Federal Farm Loan Act". We think there is lack of merit in this contention. The Federal Farm Loan Act is a broad one, seeking to carry out a public purpose. It provides, section 961 (U. S. C. A. Title 12, Chap. 7, Sec. 961): "Such receiver, under the direction of the Federal Farm Loan Board, shall take possession of the books, records, and

assets of every description of such association, collect all debts, dues, and claims belonging to it, and, with the approval of the Federal Farm Loan Board, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like approval or order, may sell all the real and personal property of such association, on such terms as the Federal Farm Loan Board or said court shall direct." This provision covers all assets. **It is hardly to be presumed that Congress intended in carrying out the purposes of this Act to have various receivers for different kinds of assets, resulting merely in inextricable confusion and chaos. The Act should be carried out according to its terms and not lose its efficiency in a maze of philosophical technicalities. It seems to us the Act is perfectly plain; that the Farm Loan Board is charged with carrying out its provisions and to see "that the moneys are applied toward the satisfaction of the bonds."**

We may say further that we are not impressed with appellant's standing in a court of equity. He purchased his bonds after the Board had appointed a receiver, and frankly admits in argument that he did so for the sole purpose of bringing lawsuits and attracting legal business. If appellant when he purchased the bonds was in quest of lawsuits, such quest has been entirely successful. He knew when he made the purchases that under the provisions of the Farm Loan Act a receiver could be appointed by the Farm Loan Board to take charge of all the assets of the insolvent bank. It was in the bondholder's contract that the receiver, with the approval of the Federal Farm Loan Board,

or upon the order of a court of record of competent jurisdiction, could sell the real and personal property of the bank on such terms as the Federal Farm Loan Board or the Court should direct. It would seem that appellant was not therefore in a position to question the appointment of a receiver by the Farm Loan Board. We do not mean to say, nor did this Court, in its previous opinions hold, that no questions could arise in relation to liquidating the affairs of the Farm Loan Bank that might be the subject of judicial determination. The Farm Loan Board and its receiver are not immune from all judicial process or control. Appellant as a bondholder has been denied no rights and there is no ground for the intervention of a court of equity up to this time. While there are some general allegations of fraud in appellant's bill, nothing is alleged that would constitute fraud or show that the receiver was not fairly attempting to protect all interests intrusted to him. We think this case is totally without equity and the trial Court was right in dismissing the same.

*Affirmed.*

Filed February 20, 1929.